DOCUMENT RESUME

ED 480 158 FL 027 807

AUTHOR	Jane, Neus Oliveras
TITLE	The Main Concepts in the Recognition of Linguistic Rights in European States. Mercator Working Papers.
SPONS AGENCY	European Union, Brussels (Belgium).
REPORT NO	WP-2
ISSN	ISSN-1133-3928
PUB DATE	2001-00-00
NOTE	18p.; Produced by CIEMEN (Escarre International Centre for Ethnic Minorities and Nations), Barcelona, Spain.
AVAILABLE FROM	CIEMEN, Rocafort 242, bis, 08020 Barcelona, (Catalunya), Spain. Tel: 34-93-444-38-00; Fax: 34-93-444-38-09; e-mail: mercator@ciemen.org; Web site: http://www.ciemen.org/mercator.
PUB TYPE	Reports - Descriptive (141)
EDRS PRICE	EDRS Price MF01/PC01 Plus Postage.
DESCRIPTORS	Civil Liberties; Foreign Countries; *Language Minorities; *Language Usage; Language of Instruction; Multilingualism; *Official Languages
IDENTIFIERS	*Europe

ABSTRACT

This paper discusses the protection of linguistic rights, focusing on the constitutional and legal experience in Europe. It addresses state plurilingualism, then examines general principles (the legal status of languages, equality, and multilingualism in representative institutions). Next, it discusses recognition of linguistic rights (the right to linguistic choice, to education, and to be attended to in the language of the citizen's choice; rights in the judicial field; and the right of a community to self-identification). The paper examines plurilingual state models, introducing a classification established by the doctrine when trying to distinguish--in the case of multilingual states--between plurilingual states and states with linguistic minorities. The first category (plurilingual states) includes those states claiming the existence of more than one official language; the formal, legal, social, and political equality of the languages and the linguistic communities; the regulation of citizens' linguistic rights and use of languages in public intersubjective relationships; and the establishment of education or training systems of or in the official languages. A second classification in this category is horizontal or vertical plurilingualism. In states with linguistic minorities, the minority languages are not treated as official languages, though they can be protected by international law via bilateral treaties between states or constitutions and state domestic law. (SM)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 480 158

[The main concepts in the recognition of linguistic rights in European states

Neus Oliveras Jané, 2001
Lecturer of Constitutional Law
University Rovira i Virgili (Tarragona)

1. Introduction 1
2. State plurilingualism 3
2.1. General principles 4
a) Legal status of languages 4
b) Equality 8
c) Multilingualism in representative institutions 9
2.2. Recognition of linguistic rights 10
a) The right to linguistic choice 11
b) The right to education 12
c) The right to be attended to in the language of the citizen's choice 13
d) Rights in the judicial field 14
e) Other rights 14
3. Plurilingual state models 15

1. Introduction

The aim of this presentation is to briefly introduce the main concepts and questions which arise when dealing with the protection of linguistic rights, mainly from the constitutional and legal experience in the European context.

Such a referential European framework is mostly plurilingual in accordance with the trends in the majority of the world states: approximately 90% of the states are plurilingual, whereas 75% of the total amount have linguistic provisions in their

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY
Sergi Vilaro
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
1

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.
Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.
1

FL027807

2

BEST COPY AVAILABLE

constitutions[1]. As for European states, particularly the Council of Europe member states -except for a few (Portugal, Iceland and recently created national states such as Croatia), the majority share the common characteristic of being multilingual states, that is to say, states where two or more languages coexist. Despite this fact, the recognition and regulation of principles and rights related to the linguistic status of individuals and linguistic minorities vary greatly, on account of the states' historical, sociological and political diversity.

Before dealing with the different linguistic legal systems, let's draw our attention to the state integration process that has given rise to the present linguistic situation, in order to subsequently highlight the political aims pursued. At the same time, it seems necessary, from the very origins of the national state, to adopt a two-fold perspective that takes into account both individual linguistic rights and those of communities, which will allow us to uncover the relationship between rights and territory - often the state, or part of it.

In short, and from a historical perspective, the construction of the nation-state is premised on the tenets of liberalism, which objects to the plurality of rules representative of the hierarchical society of the ancient regime and its inherent privileges and inequalities. Therefore, the starting point of liberalism is a specific concept of citizen –as a basic unit and core-, whereas it mistrusts minorities and communities inferior to the nation-state, the only legitimate way of organisation. Moreover, we are dealing with an abstract citizen to whom some hypothetically universal rights are given, consequently equal for all citizens regardless of their personal characteristics or membership of any social or cultural groups. Liberalism, thus, is based on the idea of an abstract individual and, therefore, on a substantially uniform idea of society.

Hence states were established as homogeneous bodies, ignoring the internal diversity -ethnic, cultural or linguistic- of its territory. In actual fact, this means the adoption of one of the communities, generally that of the majority, as the state into which the others assimilate. Integration seeks, in short, the acculturation of the different groups and their inclusion in the majority group.

---

[1] Data extracted from an article by VERNET I LLOBET, Jaume, "Principios constitucionales y derechos en un estado plurilingüe", in Javier de Lucas (dir.), *Derechos de las minorías en una sociedad multicultural*, Consejo General del Poder Judicial, Madrid, 1998, p. 18.

As it has already been suggested, the legal instrument used to bring about the population's uniformity has been the concept of formal equality and, thus, social and cultural diversity have been equally dealt with. Any public action or state policy that takes into consideration grounds such as race, origins, gender, religion or language, is deemed to contradict equality before the law, that is to say, the principle which proclaims the same legal position of all the law's addressees.

Nevertheless, this idea has been overcame by material equality, which views t as a goal to be achieved by the public authorities, rather than a given precondition. The new material dimension of equality does not demand that all subjects must be given the same rights and duties but, instead, that diverse situations ask for different legal remedies. In other words, it is not a call for uniformity, but a prohibition of those differences in treatment which are arbitrary and discriminatory if they are not justified. Parallel to the transformation of the equality principle, a certain social diversity is recognised, as well as the existence of minorities within the states, which will result in the principle of pluralism, the opposite to uniformity. From this point of view, the grounds of distinction may be based on social, ethnic, cultural, economic features, or on those which concern us here, the linguistic ones.

Added to that, certain pressure arises due to homogenisation in the international sphere, prompted by the globalisation of the economy and communications, demographic pressure or the cultural hegemony in certain civilisations, all of which implying a threat to plurality. Fortunately, there also exist forces in favour of diversity taking part in this internationalisation process, such as the international covenants aimed to recognise and protect them[2].

2. State plurilingualism

In states' domestic legislation, linguistic rights may be found either within bill of rights, often integrated in constitutions, or derived from general

[2] Amongst others, the International Covenant on Civil and Political Rights, signed in New York, December, 1966. Article 27 states: "In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language"; other more recent texts, in the context of the Council of Europe, are the Framework Convention for the Protection of National Minorities (1995), in force since February 1988, or the European Charter for Regional or Minority Languages (1992), in force since March 1998 and to which we will refer to later on.

BEST COPY AVAILABLE

liberalism- to a type of equality that takes factual, social, political, economic or cultural differences into account. This has lead to the acceptance of positive discrimination, favouring disadvantaged citizens or groups, provided that the measures proposed are proportional to the situation aiming to be changed.

State policies for linguistic minorities can be justified by rejecting the assumption that common social institutions are neutral. As it has already been seen, it seems to be so because they are the majority's and therefore they benefit from this appearance of universality. Following this pattern, the majority language is freely preserved, so that the need for positive discrimination policies, or for providing funds for minority languages, becomes fully justified. Linguistic normalisation policies would align with this general outline. By normalisation we refer to a set of measures aimed to overcome the existing inequality between two languages. The goal of such a normalisation process is to counteract the historical discriminations or demo-linguistic deficits shown by the social use of a language. It therefore tends to focus on citizen equality as regards linguistic rights and duties.

Furthermore, this new conception of equality allows the peaceful co-existence of diverse linguistic status within the same state, such as a model based on the territorial principle and the one based on the personal principle. In Val d'Aosta, Italy, the personal principle prevails, whereas in the region of South Tyrol prevails the territorial principle; in Spain we find different school linguistic models of separation or conjunction (and this is also the case in Belgium). Such differences, though, do not originate a discrimination among citizens, but they respond to a specific and different demo-linguistic situation.

c) Multilingualism in representative institutions

In general, constitutions contain the rules governing the languages to be used in the state representative institutions, that is, in legislative chambers, which usually follow a wider criterion than that of the official status. The first reason for this is to provide a major legitimacy for the most representative institutions. Secondly, it aims to protect the principle of legal certainty, which might be threatened by the plurality of non-official translated version, of legal norms: when there are different

---

prohibition to discriminate for linguistic reasons. The Charter positions itself in favour of the criteria on the territorial of languages, although it combines with the personal principle.

principles which proclaim linguistic pluralism. We will start with the latter, that is, the ways in which linguistic pluralism is recognised at the state level, being the sources of specific linguistic rights, and sometimes even its only legal positive support.

2.1. General principles

The recognition of linguistic pluralism requires the establishment of the legal status of languages. In general terms, such status can take any of the following possibilities: a statement declaring which language (or languages), out of those used within the territory, is (are) going to have the category of *official language;* when a language's scope of use does not correspond to the whole state, it is then a *linguistic minority*, which may be official in one part of the territory; or the recognition of *minority languages*, to which measures of protection and promotion are applied.

a) Legal status of languages

Despite the non-existence of a conclusive definition, we may consider a language as official when it is recognised by the public authorities as a valid means for the expression of their will. It is, therefore, the common language of its internal communication and of use in their relation with passive subjects, with full legal validity and effects[3].

More specifically, the declaration of a language as the official one should convey the following consequences[4]:

1. One only conception of the official status of languages, so that its legal effects must be always the same. This means that, in states in which there is more than one official language, a language cannot be more official than another one, in the sense that that one language cannot prevail over the other.

---

[3] See, amongst others, VERNET i LLOBET, Jaume; *Normalització lingüística i accés a la funció pública*, Fundació Jaume Callis, Barcelona, 1992, p. 22 and next, and the bibliography mentioned therein.

[4] These are the more accepted criteria by the doctrine. In Catalonia, support this view Antoni MIRAMBELL I ABANCÓ, in "La Llei 1/1998, de 7 de gener, de Política Lingüística: el nou desplegament de l'article 3 de l'Estatut d'Autonomia de Cataluna i els conceptes de llengua pròpia i de llengua oficial", *Revista Llengua i Dret*, núm. 29, 1998, p. 74, and A. MILIAN MASSANA, "Ordenament lingüístic", *Comentaris sobre l'Estatut d'Autonomia de Catalunya*, vol. I, Institut d'Estudis Autonòmics, Barcelona, 1988.

BEST COPY AVAILABLE

2. The official language must be the normal means of relations and communication within public authorities and between administrations and the citizens.

3. Any legal proceedings or businesses, public or private are valid and effective regardless of the territorial scope or sector where they are carried out, so that the use of the language cannot be restricted on account of the organisation or administration's centralised territorial structure.

4. The right to use the official language, meaning that the addressee of the communication, in either the public or the private sector, cannot force its active subject to change to another official language, or to provide with a translation.

5. Consequently, the knowledge of the official language is presumed, since the contrary cannot be alleged with legal effects (except for cases of lack of proper defence), even if the citizen does not really have the minimum linguistic skills to use the official language as an instrument for written and oral communication. In any case, this lack of knowledge must be formally proved.

6. Finally, one last, but not least, fundamental consequence is the inclusion of the official language as a compulsory subject in the public education system. Otherwise, the requirement of having a knowledge of the official language, referred to in the previous section, would be meaningless.

All these factors are particularly important in cases involving the establishment of two official languages[5]. In such cases, the individual use of any official language is indeed legally valid as regards any relations with any public authority[6]. The status of more than one official language grants the citizens the right to indistinctly make

[5] The existence of territorial boundaries with more than one official language can give rise to a linguistic legal system of two or three official languages. This is the case of the Swiss cantons, which may be bilingual or trilingual (French, German or Italian), or that of Brussels, Belgium (Dutch and French), or Spain in some autonomous communities: Galicia, Basque Country, Catalonia.

[6] So has been recognized in the sentence from the Spanish Constitutional High Court, STC 82/1986, of June, 26th: "a language is official, regardless of its reality and weight as a social phenomenon, when it is recognized by the public powers as the normal mean of communication between them and in their relationship with passive subjects, with full legal validity and juridical effects"; "in those territories having a of double linguistic official status (that is to say, double officiality), the individual use of any official language has in effect full legal validity and juridical effects in the relations they may have with any public power located in the mentioned territory".

BEST COPY AVAILABLE

use of one or the other language in all public or private dealings, without discrimination. In short, the decision belongs to citizens, since they have the right to choose[7].

However, when there is more than one official language, the proclamation of the official status principle is modulated in practice by its official use, which have to adapt to social conditions. Therefore, an official use may be established by sectors (in relation with the public administration and, within this, in courts or in parliamentary institutions, in education or in the media, amongst other relevant ones); or by territories, after the definition of geographical areas where certain languages are official. Or even a temporary official use might be established in cases where measures pursuing a progressive introduction of the language are required.

The legal doctrine gathers the variety of manifestations of the official status principle into two different models, or theoretical types. It should not be forgotten, though, that so distinctly defined they hardly ever occur in the practice: these are the territorial principle and the personal principle.

- The territorial principle implies that the linguistic regulation scheme is established on the basis of territory, so that all the inhabitants of such territory will be treated equally. The territory referred to can be the whole state or only part of it. In any case, the division of the territory into linguistic zones and the drawing of borders determining the use of one language or the other, limit the citizen's linguistic freedom, having to use the official language of whatever territory they may be in if his/her acts are to be officially effective and valid.

- On the other hand, according to the personal principle, the citizen is entitled the linguistic rights derived from the language's official status in the whole of the territory, with no territorial limitations, and with the aforementioned legal effects. As a matter of fact, linguistic provisions applies to categories of peoples according to such characteristics as their mother tongue, the language of preceding educational levels, parents' education or linguistic preferences. Thus, the right of choice is directly recognised.

---

[7] This has lead JOU I MIRABENT, Lluís, to say that " the concept of official language is therefore individual, and results in a subjective and personal right", in the article "Els principis de la llengua pròpia I llengües

BEST COPY AVAILABLE

As we will see in due time, such a division consequently has various legal effects on the conception of linguistic rights.

In relation to the territorial organisation of power, it must be kept in mind that linguistic plurality often coincides with a specific decentralised state structure, so that territorial boundaries could express linguistic diversity. This should allow those decisions concerning the legal status of languages to be taken by authorities in direct interaction with citizens, and in accordance with more democratic criteria. However, it is also possible that territorial boundaries do not coincide with linguistic demarcations, or that they are merely ignored. In such cases, the regulation of linguistic use is transferred to, and undertaken by, the central state. It is even possible that the model followed by the state regulation should be one, whereas that followed by the sub-central entity be another[8].

The distribution of powers concerning linguistic matters is a further conditioning as regards linguistic rights in a de-centralised state. A general overview may be sorted out around two possibilities. According to the first one, linguistic matters would be a overlapping substantive competence which would apply to all language related matters, regardless of the class of subject or head of power concerned. In the second case, however, the law making power on linguistic related matters would depend upon the main subject matter at stake, and, thus, the regulation of language would therefore come within the competence of the authority to which the main subject is assigned. In any case, the legal system would have to establish the kind of power involved and the level of government entitled to exercise it.

Together with the notion of official languages, and consistent with the possibility to establish more than one official language, we may also find other concepts, such as linguistic modality, territorial autochthonous language, or minority language, which are used in order to explain the multiple solutions provided to multilingualism. Linguistic modality, from a legal point of view, provides a lesser guarantee than that of the official status: a respectful and protective attitude is generally requested. Modality does not qualify a language, but its legal situation in a specific

---

oficials en l'articulat de la Llei 1/1998, of January, 7th, on Linguistic Policy", *Journal Llengua i Dret*, number 29, 1998, p. 11.

[8] Such is the case of Canada, where federal authorities follow a personality model, whereas a territoriality criterion is pursued in the province of Québec.

territory. Thus, a language may have an official status in one state, while it is a linguistic modality in another.

On the other hand, the notion of autochthonous or national language refers to the country's original, traditional and historically based language[9]. As such, it singles out a people from a community. It therefore has clearly collective connotations. Similarly, the autochthonous character of a language carries a connotation of exclusion towards foreign elements. Native or autochthonous language is the opposite of an alien language and should therefore have a prevailing use, and even exclusive use in certain areas, without any prejudice to the citizens' linguistic rights[10]. This should as well result in promoting measures which may take the form of normalisation, to which we will soon focus our attention.

Minority languages are those spoken by minority groups within a state's population, and which are different from the official language or languages. The European Charter of Regional and Minority Languages focus on them. It is noteworthy that the Charter does not deal with the issue of linguistic minorities but with that of minority languages. This remark means that it aims at languages as part of the European cultural heritage, but does not promote any individual or collective rights. What is more, its effectiveness will depend on the provisions laid down by the domestic legislation in each state[11].

b) Equality

Another general criterion which directly affects linguistic rights is the equality principle, which can also be considered either an individual right or a communities' right. As it has been previously said, equality has suffered a notable transformation, from the formal conception defending uniformity - characteristic of early

---

[9] Article 8 of the Irish Constitution defines the Irish language as the national and first official language, whereas English is only the second official language.

[10] The exclusive use of a language applies to the territory's public institutions, where such language has official status, as well as to education and place-names; the prevailing use of language applies to other public institutions placed in it but alien to the territory.

[11] Article 7 of the Charter establishes its essential principles, i.e., the recognition of regional or minority languages, out of which derives its lawful use, a concept differentiated from that of official language; the respect towards each regional or minority language's geographical area, which may not correspond to any administrative one; the need for the adoption of positive actions favouring regional or minority languages; the guarantee of the teaching and the study of regional or minority languages; the encouragement of the relationship between groups speaking the same language; and, finally, the

BEST COPY AVAILABLE

versions, it is necessary to establish which one is the authentic one, as well as to specify the coming into force of the law, which depends on its publication; finally, multilingualism is also based on the principle of equality and non-discrimination for linguistic reasons between citizens, or the diverse linguistic communities, whether they are states or sub-states legislatures.

Several consequences can be inferred from the principle we are dealing with. In parliamentary debates, there is a general criterion on the acceptance of the larger possible number of languages. This requires the creation of specialised translating or interpreting services. In Finland, for instance, a personalised translation from Finnish to Swedish, a minority language in that country, is provided for those who may need it. Thus, any sign of exclusion or discrimination towards the citizens' legitimate representatives is avoided. Secondly, central (state) authorities admit the citizens' requests in their own language, even if it is not the state official language. This is the case of the Spanish Senate, which is described as a chamber of territorial representation by the Constitution. Linguistic representation quotas are not commonly admitted in parliaments, governments or in constitutional or high courts of justice. This much is nevertheless assumed in both Swiss and Belgium parliamentary upper houses.

Before concluding this principle of broad multilingualism, it's worth mentioning the regulation in the European Union institutions, which are premised in the principle of integral multilingualism. Such integral multilingualism confers to every EC citizen the right of linguistic choice before its institutions, as well as the obligation to publish any generally binding legal proceeding in all official languages[12].

2.2. Recognition of linguistic rights

---

[12] Article 290 ECT: "The rules governing the languages of the institutions of the community shall, without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice, be determined by the Council, acting unanimously". It becomes therefore a political decision since this provision does not lay down any other restriction to the Council. That is to say, it is not dependent on the legal status that the language has within a member state. However, such co-relation seems to actually take place. This article from the Treaty was originally developed through Regulation num. 1, by which The European Economic Community Linguistic Regulation, published in the Official Journal n. 17, of October 6th, 1958, becomes established, after several successive modifications following the Community's enlargements. Article 8 reads as follows: "If a Member State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rules of its law ". The situation of Gaelic must be mentioned herein because, despite being one of the treaties' language, Ireland waived its enforcement as one of the official and working languages in EC institutions.

BEST COPY AVAILABLE

Linguistic rights can either be recognized to individuals or to communities. This latter dimension is an indispensable one, and not only because language is a means of communication which at least involves more than one person: it also involves, as it has already been pointed out, the expression of a group's identity. Despite this fact, very few constitutional documents directly establish subjective linguistic rights with specific contents; instead, on one hand, they generally rely on the aforementioned principles of the language's official status, or the prohibition of discrimination for linguistic reasons, and, on the other hand, on different rights that are part of the catalogues of fundamental rights. It should be added that, following the liberal tradition and with very few exceptions, these rights are guaranteed only to individuals[13].

The principle of the language's official status, which has been previously referred to, results in the right to know and to use the language, which implies the right to learn it. Besides, the right to be attended to in the chosen language is linked to the requirement for public administration officials to have a minimum linguistic proficiency. Let us now proceed to focus on some of the rights that specifically derive from the aforementioned general principles.

a) The right to linguistic choice

The right to linguistic freedom, defined as the right to freely use and choose the mother tongue in all public and private spheres, is hardly recognised as an autonomous right, and, therefore, it is usually made up through other rights. Thus, the right to use one's own language is based on the essential role it plays in the free development of the human personality; it may also relate to the right to freedom of speech, or as an individual manifestation of a linguistic minority collective right. Such a notion of the right is limited by the scope given to the principle of official status, either in accordance with the personal or territorial criteria. The personal principle implies the establishment of individual rights that accompany individuals regardless of the territory they may be in. The territorial principle, on the contrary, gives priority to collective rights, since it protects linguistic communities historically settled in a territory.

This means, in territorial systems, that newcomers and immigrant population from other linguistic areas are expected to accept an adapt to the

[13] Exceptions are mainly found in international texts concerning the declaration of rights, which have been dealt with in footnote number 2.

language of the territory. On the other hand, in models ruled under the personal principle, the mobility from one territory to another does not affect citizens, subsequently allowing for freedom of movement, although this option may threaten the linguistic stability of the recipient community. In personal-based systems, freedom of choice is not absolute either: rights are generally restricted to particular groups and conditioned by either numerical or other factual specific requirements. Otherwise it would lead to an extremely expensive situation that no state could possibly afford[14].

b) The right to education

The right to learn the official or recognised languages involves several consequences: on the one hand, the need for qualified teachers, and, on the other, the students' duty to learn, which will have to be proved by an appropriate certificate or degree. Instruction can be either "*of*" the language, as an academic subject which generally implies the existence of languages which are object of special respect and protection, or "*in*" the language, that is, as an everyday tool for transmitting the knowledge, which usually entails the existence of an official language. The right to instruction may also require the teaching of the cultural context in which the language is used, since language is one of the cultural aspects of a specific ethnic group.

When there are more than one official language, and, therefore, more than one language for education, this right offers in practice a variety of alternatives that can be divided into two linguistic models or systems: the separation of schools on linguistic lines (Basque Country), or the system of complete bilingualism, or linguistic conjunction (Catalonia). The former system is more respectful towards individual freedom to choose the language of education, although it is frequently restricted by, for instance, the territorial principle, or by requirement for a minimum number of students. Besides, the decision to attend one or another school has to be non-compulsory in order to avoid discrimination[15]. On the other hand, the system of bilingual education, consisting in the

[14] For instance public authorities might be obliged to provide instruction in a given language only if there is a sufficient number of students.

[15] However Article 19 of the Statute of Autonomy of the province of Bozen, in Trentino-Alto Adige, Italy, enacted to give effect to the 1946 Paris Agreements (known as the De Gasperi-Gruber Agreements), provides a system of non-elective linguistic separatism, in German or Italian, according to the student's

BEST COPY AVAILABLE

teaching of both official languages, guarantees the non-discrimination of students for linguistic reasons, although it limits the right of linguistic choice, since students cannot reject to learn one of the official languages.

In order to make the system more flexible, the right to be educated in a language that students understand is guaranteed, particularly in the lower levels, as well as the undertaking of adjusting programs and pedagogical support. These measures facilitate the integration of students from other communities and their participation in the educational process, while it complies the principles of liberty of movement and equality of rights for all citizens[16].

c) The right to be attended to in the language of the citizen's choice

This right is a consequence of the citizens' right to linguistic choice before public administration. As we have already said, this fact implies the administration's availability to attend in the administered person's language, the impossibility to plead the lack of knowledge of the language, or to ask the citizen to change language or submit a translation. Under no circumstances this should lead to discrimination for linguistic reasons. This right can be guaranteed through the establishment of a two-fold or three-fold civil service system according to the number of official languages. Accordingly, the administration's linguistic availability can be fostered by providing additional rewards for those public officials accrediting the knowledge of different official languages. This capacity can at least be required as regards public officials working in direct contact with the public.

There has been some attempts to distinguish between an active and a passive aspect of this right. The passive one implies the public authorities' duty to effectively accept the citizen's communication, deal with it and reply to it, though not necessarily in the language of the citizen's choice. On the contrary, the latter aspect, that is, answering the administered subject in their language, would make up the active dimension. It seems logical that the contents of the right should cover both dimensions, as the choice depends upon the citizens themselves, and not upon the public

---

mother tongue. A similar model is followed in Canada as provided in article 23 of the Constitution Act, 1982.

[16] For a detailed analysis on the different models in several countries, see the work of MILIAN MASSANA, Antoni, *Drets Lingüístics i dret fonamental a l'educació. Un estudi comparat: Itàlia, Bèlgica, Suissa, el Canadà i Espanya*, Institut d'Estudis Autonòmics, Barcelona, 1992.

BEST COPY AVAILABLE

administrations -which have the duty to attend them. Nonetheless, the passive dimension of this right has sometimes been accepted when the establishment and normalisation process of one language is in it early stages. A comparable unequal situation may also occur not between public authorities and the administered, but in the private sector, such as in the socio-economic field, in non-public companies or organizations[17].

d) Rights in the judicial field

In this sphere we find the detainee's right to be promptly and precisely informed of the reasons for his/her arrest and the nature of his/her charge in a language he/she can understand[18]. This correlatively leads to the obligation to provide the detainee with a free interpreter when the defendant does not understand the language of the court. This right extends to foreigners and citizens from other linguistic areas, if such is the principle adopted by the state, but, strictly speaking, it would not be available if the state's linguistic legal basis were based on the personal principle. Notwithstanding, this right could also affect the right to defence, so that the demonstrated ignorance of the language can also cause defencelessness. Furthermore, the right to due process also embraces the right to a trial without undue delays, so that incidental translations cannot justify a delay in the proceedings.

e) Other rights

To finish with this non-comprehensive relation of rights, let us mention as well the right of a community to self-identification, so that the community itself establishes the place-names of the territory that occupies in opposition to those given by the majority community. In technically advanced societies, it can be upheld the existence of the right to be informed by the media in the native language, which would presuppose the existence of the community's own media groups, or at least some

[17] For example, the active aspect of this right would involve the obligation for shop-owners to attend their customers in the language they use, without the possibility to plead ignorance.

[18] In the European scope, this right is proclaimed in article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of 1950, which third section states: "Everyone charged with a criminal offence has the following minimum rights: a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him".

BEST COPY AVAILABLE

linguistic use favourable to lesser used languages. To boost such plural information would imply the undertaking of promotion and funding policies by public authorities.

Two final issues that affect linguistic rights deserve our attention. Firstly, we have related all the aforementioned rights to the public administration, but we have overlooked what happens within the private organisations, specifically into private socio-economic activities. It seems clear, though, that in the current stage of development of the interventionist state, it is not coherent to accept public authorities to regulate in certain areas, while, at the same time, rejecting its intervention in linguistic matters. In other words, if the state can regulate the cost of specific goods or services, it should also be entitled to regulate the language of commercial signs or bills. It is indeed a complex subject because the state's power to regulate the economy or the single market conflicts with other rights, such as freedom of trade and, consequently, the freedom of self-organisation for private businessmen. We have to add also Community law, based on the principle of free circulation of goods and free competition, in constant expansion. The relationship between these diverse principles and rights falls upon such important current issues as the labelling of products, companies' internal communications or film production.

The second issue deals with the measures to insure the effective guarantee of rights, to which we have previously referred. The question is whether these measures should be accompanied by penalties to enforce the observance of the duties and obligations deriving from linguistic rights. Once again, this would lead to a conflict of rights in a particularly sensitive subject, either with regards to individual rights, as for the possible economic consequences in the market, resulting from legal decisions. The agreement between the concerned parts or the balance of rights and duties and, above all, the measures of promotion, are usually preferable, provided they are effective.

3. Plurilingual state models

In order to complete the outline of the linguistic situation, we may introduce one of the classifications established by the doctrine when trying to

distinguish -in the case of multilingual states- between plurilingual states and states with linguistic minorities[19].

The first category, that is, plurilingual states, includes those states claiming, firstly, the existence of more than one official language nation-wide and for all their administrations; secondly, the formal, legal, social and political equality of the languages and the existing linguistic communities; thirdly, the regulation of the citizens' linguistic rights and the use of languages in public inter-subjective relationships, including legislative, administrative and judicial means to put these rights into effect; and finally, the establishment of education or training systems of or in the various official languages.

A second classification can be established in this first category, according to the personal or territorial criteria: horizontal or vertical plurilingualism. Horizontal plurilingualism is characterised by the division of the territory into linguistic boundaries or demarcations; vertical plurilingualism, or of superposition, which derives from the personal principle. The territorial principle is followed by Belgium, where we can find three constitutionally recognised linguistic groups: the Dutch, French and German ones, divided as well into four linguistic regions, three of which are monolingual and the other, Brussels, is a bilingual one. In educational matters, unilingualism is preferred, so that the territorial language must be used, except for Brussels, where the principle of free choice governs. It is also the case of Switzerland, where three national languages exist - German, French and Italian - and where, according to the territorial principle, most of the cantons are plurilingual (19 out of 23), three of them are bilingual (German and French), and one is trilingual (Grisons). As regards the personal principle, it is represented by Finland, where a situation of full equality between the Finnish and Swedish languages is established, despite the minority condition of the latter.

In those states having linguistic minorities, however, the languages of minority groups are not treated as official languages, though this does not mean they do not enjoy any type of recognition at all. They can be the recipient of protection in international law by means of bilateral treaties between states (this is the case of Italy), or through constitutions and state domestic law. The languages of minorities can either be official in the part of the territory where the linguistic minority is

[19] CORRETJA I TORRENS, Mercè, in *L'acció europea per a la protecció dels drets lingüístics*, Escola d'Administració Pública de Catalunya, Barcelona, 1995, p. 17-24.

settled (in Italy, again, or in Spain), or their population can have specific linguistic rights, individual or collective, and other education-related rights.

Minority languages should be distinguished from linguistic minorities in this category of states. Their protection as a patrimonial or cultural heritage brings a new dimension to the protection of linguistic rights, despite being less effective or less guaranteed than when considered an individual right.

After trying to establish this classification, it is possible to state that a certain grading system exists as regards the effective equality between the languages coexisting within a state, ranging from simply ordering the protection of specific minority languages, to a complete state of plurilingualism. Full equality is only therefore achieved when a citizen can effectively use his/her language in any part of the state territory.

BEST COPY AVAILABLE

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

ERIC

REPRODUCTION RELEASE

(Blanket)

I. DOCUMENT IDENTIFICATION (Class of Documents):

All Publications: The main concepts in the recognition of Linguistic rights in European states

Series (Identify Series): Mercator "working papers" collection (2)

Division/Department Publications (Specify): Mercator - Linguistic Rights and Legislation

Publication Date: 2001

II. REPRODUCTION RELEASE:

In order to disseminate as widely as possible timely and significant materials of interest to the educational community, documents announced in the monthly abstract journal of the ERIC system, *Resources in Education* (RIE), are usually made available to users in microfiche, reproduced paper copy, and electronic media, and sold through the ERIC Document Reproduction Service (EDRS). Credit is given to the source of each document, and, if reproduction release is granted, one of the following notices is affixed to each document.

If permission is granted to reproduce and disseminate the identified documents, please CHECK ONE of the following three options and sign at the bottom of the page.

The sample sticker shown below will be affixed to all Level 1 documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

1

Level 1

☒

Check here for Level 1 release, permitting reproduction and dissemination in microfiche or other ERIC archival media (e.g., electronic) *and* paper copy.

The sample sticker shown below will be affixed to all Level 2A documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE, AND IN ELECTRONIC MEDIA FOR ERIC COLLECTION SUBSCRIBERS ONLY, HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2A

Level 2A

☐

Check here for Level 2A release, permitting reproduction and dissemination in microfiche and in electronic media for ERIC archival collection subscribers only

The sample sticker shown below will be affixed to all Level 2B documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2B

Level 2B

☐

Check here for Level 2B release, permitting reproduction and dissemination in microfiche only

Documents will be processed as indicated provided reproduction quality permits.
If permission to reproduce is granted, but no box is checked, documents will be processed at Level 1.

I hereby grant to the Educational Resources Information Center (ERIC) nonexclusive permission to reproduce and disseminate these documents as indicated above. Reproduction from the ERIC microfiche or electronic media by persons other than ERIC employees and its system contractors requires permission from the copyright holder. Exception is made for non-profit reproduction by libraries and other service agencies to satisfy information needs of educators in response to discrete inquiries.

Sign here, → please

Signature: Sergi Vilaró

Printed Name/Position/Title: Coordinator

Organization/Address: Rocafort, 242, bis
08029 - Barcelona
Catalonia - SPAIN

Telephone: +34 93 444 38 01

FAX: +34 93 444 38 09

E-Mail Address: mercator@ciemen.org

Date: June 31st, 2003

(over)

III. DOCUMENT AVAILABILITY INFORMATION (FROM NON-ERIC SOURCE):

If permission to reproduce is not granted to ERIC, *or*, if you wish ERIC to cite the availability of these documents from another source, please provide the following information regarding the availability of these documents. (ERIC will not announce a document unless it is publicly available, and a dependable source can be specified. Contributors should also be aware that ERIC selection criteria are significantly more stringent for documents that cannot be made available through EDRS.)

Publisher/Distributor:
Address:
Price:

IV. REFERRAL OF ERIC TO COPYRIGHT/REPRODUCTION RIGHTS HOLDER:

If the right to grant this reproduction release is held by someone other than the addressee, please provide the appropriate name and address:

Name: Neus Oliveras
Address: Rocafort, 242, bis (CIENTEM Mercator) 08029 - Barcelona Catalonia – SPAIN

V. WHERE TO SEND THIS FORM:

Send this form to the following ERIC Clearinghouse:

However, if solicited by the ERIC Facility, or if making an unsolicited contribution to ERIC, return this form (and the documents being contributed) to:

Post-it® Fax Note 7671	Date 6/11	# of pages ▶
To Sergi Vilaro	From Laurel	
Co./Dept.	Co. CAL	
Phone #	Phone #	
Fax # 34 93 444 3809	Fax # 202-363-7204	

EFF-087 (Rev. 2/2000)